

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HARRY SMITH, JR. and ROSLYN)	
WOODARD SMITH, Individually and as)	
Administrators of THE ESTATE OF)	
HARRY SMITH, III)	
)	
Plaintiffs,)	Case No. 04-1254-GMS
)	
v.)	
)	
CITY OF WILMINGTON, JOHN)	
CIRITELLA, THOMAS DEMPSEY, and)	
MATHEW KURTEN,)	
)	
Defendants.)	

APPENDIX TO
DEFENDANTS' REPLY BRIEF IN SUPPORT OF
THEIR MOTION FOR SUMMARY JUDGMENT

OF COUNSEL:

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Dated: July 12, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ESTATE OF HARRY SMITH, III,)	
HARRY SMITH, JR., and ROSLYN)	
WOODARD SMITH,)	
)	
Plaintiffs,)	
)	Civil Action
v.)	No. 04-1254
)	(GMS)
WILMINGTON POLICE DEPARTMENT,)	
MICHAEL SZCZERBA and ONE OR)	
MORE JOHN DOES,)	
)	
Defendants.)	

Deposition of JOHN F. CIRITELLA taken pursuant to notice at the law offices of Richards, Layton & Finger, One Rodney Square, Third Floor, Wilmington, Delaware, beginning at 10:00 a.m. on Monday, May 8, 2006, before Kathleen White Palmer, Registered Professional Reporter and Notary Public.

APPEARANCES:

ANNE T. SULTON, PH.D., ESQUIRE
P.O. Box 2763
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JOHN A. PARKINS, JR., ESQUIRE
K. TYLER O'CONNELL, ESQUIRE
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Department and Michael Szczerba

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1 eyes on him so I -- no, I didn't see a shotgun.

2 Q. Did you see a scalpel?

3 A. No, ma'am.

4 Q. Did you see any weapon?

5 A. Not in the time that I put the car in park, no.

6 Q. I want to take you back to being on the
7 sidewalk, walking still on the sidewalk before you
8 step out into the street on the other side of that
9 blue car.

10 Did you see any people, any citizens on the
11 street? On the porch? Anything like that?

12 A. No, ma'am.

13 Q. When you stepped into the street and shot into
14 the car, did you see any people in the street on the
15 porches? Anything?

16 A. No, ma'am.

17 Q. Was there ever a time where you became aware
18 that there were people on the street and on the
19 porches?

20 MR. PARKINS: Objection to the form, but
21 you can answer.

22 A. I never saw any people. The only person that I
23 saw was Sergeant Dempsey, Tom Dempsey, and he would
24 have been in this area. He's the only person that I



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1 saw.

2 Q. If you would be kind enough with the black pen,
3 make a double X for where you saw Mr. Dempsey.

4 A. All right. That area right there.

5 Q. At what point did you first realize
6 Officer Dempsey was where you placed the double X?

7 A. When the vehicle, I guess, was proceeding -- I
8 don't even -- by me, I guess as I turned, at one point
9 I was able to get visual contact on Sergeant Dempsey.

10 Q. Where did he come from? Do you know?

11 A. I do not know.

12 Q. Did you see any police vehicle in the vicinity
13 of Officer Dempsey, not including your police vehicle?

14 A. No, ma'am.

15 Q. So as you're walking up the sidewalk, you saw
16 Mr. Dempsey, as well?

17 A. No. Again, I think this is my only visual of
18 him.

19 Q. Did you see any other police officers --

20 A. No, ma'am.

21 Q. -- as you're walking on the sidewalk?

22 A. No, ma'am.

23 Q. As you step into the street and fire, did you
24 see any other police officers?



(STATEMENT TRANSCRIBED FROM VIDEOTAPE)

Sworn Statement of:) Sunday
) September 14, 2003
DETECTIVE JOHN CIRITELLA) 2:58 a.m.

Wilmington Police Department
300 North Walnut Street
Wilmington, Delaware 19899

APPEARANCES:

JEFFREY M. WEINER, ESQUIRE
LAW OFFICES OF JEFFREY M. WEINER, P.A.
1332 King Street
Wilmington, Delaware 19801

SERGEANT WILLIAM BROWN,
Wilmington Police Department
Criminal Investigation Division

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1 then?

2 A. At that particular time, fearing for the safety
3 of other people at that particular time, stealing a
4 police car, again, a "shots fired" complaint, driving
5 in a reckless manner of what I observed at that
6 particular time, just fearing that if he -- I'm giving
7 verbal commands, that he's just going to continue in a
8 reckless manner.

9 Q. Okay. At the time of the initial part of the
10 incident, were you aware of -- you heard a "shots
11 fired" call come out?

12 A. That's right.

13 Q. Did you know who was doing the firing?

14 A. No, I did not.

15 Q. Okay. So you didn't know whether it was the
16 suspect that was shooting or --

17 A. That's correct.

18 Q. -- or the officers?

19 Did you have any knowledge of what the
20 reason was that initiated the pursuit?

21 A. I did not hear that, no. And then I knew that
22 he had took the marked police car.

23 Q. Okay. Did you have any knowledge of what was
24 in the police car?



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FOR THE DISTRICT OF DELAWARE

ESTATE OF HARRY SMITH, III,)	
HARRY SMITH, JR., and ROSLYN)	
WOODARD SMITH,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action
)	No. 04-1254
)	(GMS)
WILMINGTON POLICE DEPARTMENT,)	
MICHAEL SZCZERBA and ONE OR)	
MORE JOHN DOES,)	
)	
Defendants.)	

Deposition of THOMAS CLIFTON DEMPSEY taken pursuant to notice at the law offices of Richards, Layton & Finger, One Rodney Square, Third Floor, Wilmington, Delaware, beginning at 10:00 a.m. on Tuesday, May 9, 2006, before Kathleen White Palmer, Registered Professional Reporter and Notary Public.

APPEARANCES:

ANNE T. SULTON, PH.D., ESQUIRE
P.O. Box 2763
Olympia, Washington 98507
for the Plaintiffs

JOHN A. PARKINS, JR., ESQUIRE
K. TYLER O'CONNELL, ESQUIRE
RICHARDS, LAYTON & FINGER
One Rodney Square - Third Floor
Wilmington, Delaware 19899
for the Defendants Wilmington Police
Department and Michael Szczerba

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1 At which time I felt that due to the danger
2 this guy just posed to John Ciritella, due to the fact
3 that he's already obviously posed danger by stealing a
4 police car, felony suspect, all these things coming
5 into play, the fact that he had a shotgun in his
6 possession, not knowing who got shot, who did the
7 shooting at 14th and Washington, all these things
8 coming into play, and also the fact that it appeared
9 that he was -- if he got through that area, he would
10 be gone, he would have a good distance on any police
11 vehicles that would have to chase him, I proceeded to
12 discharge my weapon to halt the situation at that
13 point at the 500 block of Harrison.

14 I proceeded -- he was approximately three
15 to five feet away from me at one point. I waited,
16 actually, a second because of a crossfire situation
17 between myself and several officers down the block.

18 Once he started to pass me and I had a
19 better backdrop of buildings and nobody was in the
20 area, I started -- proceeded to fire my handgun at the
21 driver's side window of the vehicle shattering same.

22 I remember, I recall while shooting and
23 moving towards the vehicle going northbound on
24 Harrison up the hill, firing and hitting the -- I



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1 Q. Can you, using the black pen, just put little
2 squares or triangles where you saw other cars, other
3 police vehicles?

4 A. I actually saw two here. I can't see any
5 farther down the street. And that was only for a
6 matter of a second that I observed that.

7 Q. Did you see any up Harrison Street?

8 A. No.

9 Q. Do you know how many police vehicles were
10 involved in the pursuit?

11 A. No.

12 Q. The car you were driving, was it marked or
13 unmarked?

14 A. Marked.

15 Q. Were you in uniform or out of uniform?

16 A. In uniform.

17 Q. What about Mr. Kurten, was he in a marked or
18 unmarked car?

19 A. I believe it as unmarked.

20 Q. Was he in uniform or out of uniform?

21 A. I don't recall.

22 Q. Do you recall whether the lights and siren were
23 left on your car after you exited?

24 A. Yes, they were.



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WOODARD SMITH,)	
)	
Plaintiffs,)	
)	Civil Action
v.)	No. 04-1254
)	(GMS)
WILMINGTON POLICE DEPARTMENT,)	
MICHAEL SZCZERBA and ONE OR)	
MORE JOHN DOES,)	
)	
Defendants.)	

Deposition of MATTHEW W. KURTEN taken pursuant to notice at the law offices of Richards, Layton & Finger, One Rodney Square, Third Floor, Wilmington, Delaware, beginning at 10:00 a.m. on Wednesday, May 10, 2006, before Kathleen White Palmer, Registered Professional Reporter and Notary Public.

APPEARANCES:

ANNE T. SULTON, PH.D., ESQUIRE
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K. TYLER O'CONNELL, ESQUIRE
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Wilmington, Delaware 19899
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Department and Michael Szczerba

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1 Q. Why did you think that?

2 A. Because of the actions taken by Harry Smith on
3 that date.

4 Q. So tell me what you saw that led you to believe
5 you needed to discharge your weapon.

6 A. At 5th and Harrison streets, I was parked right
7 behind Detective Ciritella. He went to the northeast
8 corner of 5th and Harrison. I was on the south side
9 initially of the 1100 block of west 5th Street, which
10 is just east of Harrison Street where Harry Smith
11 initially stopped.

12 Once he proceeded to accelerate, drive up
13 on the sidewalk towards Detective Ciritella, I moved
14 around towards the intersection of 5th and Harrison
15 Street and I observed that he was going straight
16 towards Detective Ciritella.

17 Q. You then did what after you made that
18 observation?

19 A. Detective Ciritella had fired on the subject
20 fearing for his life and I also fired fearing for not
21 only Detective Ciritella's life, but also the life of
22 anyone else that was at the scene or could encounter
23 this individual at some point in time thereafter if he
24 should escape.



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1 armed with a shotgun? Did anybody tell you that?

2 A. Did anybody tell me that?

3 Q. Yes.

4 A. No, nobody told me that.

5 Q. Can you define for me or tell me what it means
6 if someone says they had a clear backdrop?

7 A. Clear backdrop in my definition would be you
8 have your gun out, you have your line of sight on its
9 intended target, you want to make sure that the
10 surrounding background is clear. You want to make
11 sure that there's no other pedestrians, innocent
12 victims, anything else that could be injured, harmed,
13 damaged to a certain extent. Certainly you want to
14 make sure that you have your intended target and only
15 that target in the range of fire should you have to do
16 so.

17 Q. When you were discharging your weapon, did you
18 have a clear backdrop?

19 A. Yes, or else I would not have fired.

20 Q. You didn't see any people on the street in the
21 500 block of Harrison Street during any of the time
22 that you were firing your weapon?

23 A. No. Certainly in the areas, immediate areas
24 where we were looking and we were -- action was taking



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(STATEMENT TRANSCRIBED FROM VIDEOTAPE)

Sworn Statement of:) Sunday
) September 14, 2003
CORPORAL MATTHEW KURTEN) 3:23 a.m.

Wilmington Police Department
300 North Walnut Street
Wilmington, Delaware 19899

APPEARANCES :

JEFFREY M. WEINER, ESQUIRE
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1332 King Street
Wilmington, Delaware 19801

SERGEANT WILLIAM BROWN,
Wilmington Police Department
Criminal Investigation Division

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C12

1 westbound. It eventually took the northbound path in
2 the 500 block of Harrison Street.

3 Concerned for the well-being of not only
4 other officers and victims, any innocent citizens out
5 there, a few more shots were fired. I don't know
6 specific numbers at that time. I remained on pretty
7 much the rear driver's side quarter panel of the
8 vehicle. That was my position at that point in time.

9 I know that district cars, patrol officers,
10 they are required to take out a shotgun on every shift
11 and that was likely to be inside the vehicle. There's
12 a mount inside the passenger compartment where the
13 shotgun is kept. I knew that if the suspect had
14 gotten a hold of that gun, with his prior demeanor,
15 including the chase and his acts towards Detective
16 Ciritella, there could be further bodily harm
17 threatened and/or committed.

18 And the car eventually stopped in the
19 middle of the block.

20 Q. Okay. Talk about when you -- who shot first?

21 A. Detective Ciritella.

22 Q. Okay. The suspect was driving at him?

23 A. Yes, sir.

24 Q. Okay. And you observed him being in front of



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1 the vehicle and retreating and moving off to the side?

2 A. Yes, sir.

3 Q. Trying to get out of his way, also?

4 A. Yes, sir.

5 Q. And you fired at the vehicle at around the same
6 time fearing that he wouldn't be able to get out of
7 the way and you were trying to stop him from running
8 over Officer Ciritella?

9 A. That's correct.

10 Q. Okay. And so you fired a number of rounds at
11 that point. Any idea how many?

12 A. I would say maybe two, three.

13 Q. Okay. And then you reassessed it and stepped
14 back. And he struck the parked vehicle?

15 A. Yes.

16 Q. Okay. And at that point you didn't know where
17 he was going to go because he was in motion, it was
18 turning as it was driving the jeep around?

19 A. He showed no, I guess, desire to stop. He
20 wasn't going to stop.

21 Q. Still accelerating?

22 A. He was going to try to go somewhere.

23 Q. Okay. And there were officers in the area.

24 You could see that there was at least one officer to



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1 your left --

2 A. Mm-hmm.

3 Q. -- possibly in that vehicle's path again?

4 A. Mm-hmm, that is correct.

5 Q. Okay. And that's when you fired your second --

6 A. Yes.

7 Q. -- round or rounds?

8 A. Yes.

9 Q. Okay. Did the vehicle stop at that point?

10 A. The vehicle -- no. Proceeded slowly northbound
11 in the 500 block of Harrison Street.

12 Q. Okay. And at that point, once it was
13 travelling in a northbound direction, you fired at him
14 again fearing --

15 A. Yes.

16 Q. -- that the suspect would escape and would be
17 armed at that point --

18 A. Yes.

19 Q. -- at least with a shotgun that was in the car?

20 A. Already armed with the car itself.

21 Q. Okay. Originally when the initial radio
22 broadcast came out, did you hear the reports of shots
23 fired?

24 A. Yes, I did.



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1 Q. Did you know who had fired what?

2 A. I did not. I did not know any of the
3 circumstances.

4 Q. But you knew shots had been fired?

5 A. That's correct.

6 Q. Okay. So in your mind, the suspect could have
7 possibly already been armed?

8 A. Yes, sir.

9 Q. Okay. At the point where you and Detective
10 Ciritella arrived at 5th and Harrison streets, how did
11 you position your vehicles, the two of you?

12 A. Detective Ciritella was parked in front of me
13 facing northbound, facing the corner that the -- the
14 northeast corner. And I was directly behind him
15 facing --

16 Q. Were the cars parked in a manner as to block
17 the intersection?

18 A. Yes, yes. There was no other avenue of escape
19 than what he tried to take.

20 Q. Okay. So at that point your intention was to
21 try to contain the situation, and at that point you
22 observed Detective Ciritella out of the car and you
23 were out of your car, as well?

24 A. Yes.



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WOODARD SMITH, individually and)
as Administrators of the ESTATE)
OF HARRY SMITH, III,)
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) Civil Action
v.) No. 04-1254-GMS
)
CITY OF WILMINGTON, JOHN)
CIRITELLA, THOMAS DEMPSEY and)
MATTHEW KURTEN,)
)
Defendants.)

Deposition of JOHNNY WHITEHEAD taken
pursuant to notice at the United States District
Court, District of Delaware, Conference Room 2204, 844
North King Street, Wilmington, Delaware, beginning at
8:35 a.m., on Tuesday, June 6, 2006, before Kurt A.
Fetzer, Registered Diplomate Reporter and Notary
Public.

APPEARANCES:

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- and -
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(A brief recess was taken.)

BY MS. SULTON:

Q. Now, so you hear this call over the radio and you say you were dispatched. Did they specifically ask for you and your partner, your car to go and check it out or was it kind of a general call to everybody working keep your eye out?

A. I don't recall. I believe it may have been, because that's our district I believe we were dispatched.

Q. So you were told what as you remember it?

A. That a tall, light-skinned, black male had ran away from the hospital.

Q. And then you were on the lookout for that person?

A. Yes.

Q. And you eventually saw that person, correct?

A. No.

Q. How was your attention drawn to Harry Smith, III?

A. Well, I was responding to the hospital to go to the bathroom and, again, I saw him running southbound on the west side of the street with a band and a hospital gown. And then I thought that, I said man,



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1 you know, this must be an epidemic. Clearly he wasn't
2 the guy we were looking for. His physical stature did
3 not match the guy we were initially looking for, so...

4 Q. And how did he appear to you when you saw him?

5 A. When I first saw him, he was just running
6 southbound. So I didn't see his facial expression. I
7 just know it was a dark-skinned, heavysset, black male
8 running southbound.

9 Q. And it was your understanding what you were
10 looking for was a perhaps taller, light-skinned male
11 but someone who had eloped from the hospital?

12 A. Yes.

13 Q. And was it your understanding the person ran
14 away from the hospital because they were experiencing
15 some mental health problems?

16 A. That could have very well be. I don't actually
17 recall the state of mind of the escapee.

18 Q. But it wasn't your impression that someone was
19 running away from cancer surgery or --

20 A. Well, I don't think he was running from
21 surgery, but I mean people do that if they're waiting
22 too long or they're not comfortable with their
23 treatment from the hospital, they'll flee so it's not
24 uncommon.



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1 Q. And you have to have a key to unlock it,
2 correct?

3 A. You can unlock it with a key. You can also
4 unlock it with a button.

5 Q. You can unlock it with a button. Where is the
6 button?

7 A. It's on the console, center console.

8 Q. Before you started operating that vehicle, did
9 you know where the button was on the center console?

10 A. Yes.

11 Q. Would I as a person off the street never having
12 driven a patrol car know where the button is on the
13 center console to unlock the shotgun?

14 A. Probably not if you're not used to the police
15 vehicles.

16 Q. But in this particular vehicle did it have a
17 lock with a key?

18 A. It had a lock. I'm not sure if we had a key or
19 not for that lock, but you can unlock it with a key
20 and you can unlock it with the button.

21 Q. So if you have a key is it the same key that
22 you use for the ignition of the car?

23 A. No.

24 Q. It's a separate key?



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1 Smith?

2 A. I don't think that was my partner. I believe
3 that was Sergeant Donohue.

4 Q. So Sergeant Donohue got on the radio and said
5 what based on your understanding?

6 A. I believe it was shots fired.

7 Q. And how did she know shots were fired?

8 A. She was responding, she was in the block when I
9 fired my shot.

10 Q. So she saw you shoot Harry?

11 A. I don't know what she saw. I know that she was
12 in the block. She was close enough to see. Whether
13 or not she saw it or not, I don't know.

14 Q. So at no point did you or your partner say that
15 Harry was shooting at you, correct?

16 A. I did not say he was shooting at me, no.

17 Q. And your partner didn't say that either,
18 correct?

19 A. I'm not sure what he said. I know I didn't say
20 that.

21 Q. Have you talked with him?

22 A. I spoke with him.

23 Q. About the incident?

24 A. Yes.



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